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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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06/06/2002

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EXAMINER

PRATT, HELEN F

ART UNIT

PAPER NUMBER

1761

9

DATE MAILED: 06/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/674,369

Applicant(s)

AFTOORA, WILLIAN F.

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5, 14-18 and 20-28 is/are allowed.
- 6) ☐ Claim(s) 1-4, 6-9 and 12 is/are rejected.
- 7) ☒ Claim(s) 11, 13, 19 and 29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canton.

The claims are rejected for the reasons of record cited in the last office action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 3, 6, 7, 8, 9, 12, are rejected under 35 U.S.C. 102(b) as being anticipated by Luber et al.

Luber et al. disclose a antacid composition containing a bicarbonate, a soluble binder, preservatives and no acidulents (abstract and col. 5, lines 16-38, col. 8, lines 5-39) as in claims 1-3, 7, 8, 9 and less than 1% preservatives as in claims 6, and 12.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Luber et al.

Claim 10 further requires the use of particular preservatives. The reference discloses parabens. However, as the benzoates and sorbates are also well known, it would have been within the skill of the ordinary worker to substitute one well known preservative for another. Therefore, it would have been obvious to substitute one known preservative for another.

ALLOWABLE SUBJECT MATTER

Claims 5, 14-18, 20-28 are allowed.

Claims 11, 13, 19 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

ARGUMENTS


Applicant's arguments filed 3-25-02 have been fully considered but they are not persuasive. Applicants argue as to Canton that the composition is to a foaming additive which contains a two component releasing agent which can be acids or monocalcium phosphate which is critical to the composition and that the composition does not require sugars which are required. However, monocalcium phosphate with the other claimed ingredients is distinctly disclosed in col. 6, lines 29-43. Monocalcium phosphate is not an acid, but a salt and one of its uses is as a buffer in foods (Hawley –

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Condensed chemical dictionary). It would have produced carbon dioxide when combined with the bicarbonate, which is a different process than producing carbon dioxide using acids, but the same function is accomplished. The product of Canton would have inherently lowered the pH of the product due to the use of the bicarbonate and the monocalcium phosphate particularly as bicarbonate is an alkaline material. The claimed composition could also produce foam, particularly in claims with no amounts, as the composition would have been carbonate material mixed with acids, which generally produce carbon dioxide, and hence bubbles or foam.

Any inquiry concerning this communication should be directed to Helen F. Pratt at telephone number 703-308-1978.

Hp 6-5-02


HELEN PRATT
PRIMARY EXAMINER